



(Original Signature of Member)

108TH CONGRESS  
1ST SESSION**H. R. \_\_\_\_\_****IN THE HOUSE OF REPRESENTATIVES**

Mr. Goodlatte (for himself, Mr. Stenholm, Mr. Lucas of OK, Mr. Gutknecht, Mr. Blunt, Mr. Gallegly, Mr. Osborne, Mr. Burns, Mr. Chocola, Mr. Neugebauer, Mr. Nethercutt, Mr. Smith of MI, Mr. Kingston, Mr. Bartlett of MD, Mr. Brown of SC, Mr. Upton, Mr. Camp, Mr. Young of AK, Mr. Collins, Mr. Baker, Mrs. Jo Ann Davis of VA, Mr. Duncan, Mr. Forbes, Mr. Garrett, Mr. Herger, Mr. Hoekstra, Mr. Janklow, Mr. Jones of NC, Mr. Keller, Mrs. Miller of MI, Mr. Oxley, Mr. Souder, Mr. Tiberi, and Mr. Wicker) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

**A BILL**

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access such workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Temporary Agricul-  
5 tural Labor Reform Act of 2003".

1 **SEC. 2. ADMISSION OF TEMPORARY H-2A WORKERS.**

2 (a) IN GENERAL.—Section 218 of the Immigration  
3 and Nationality Act (8 U.S.C. 1188) is amended to read  
4 as follows:

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 SEC. 218. (a) APPLICATION.—No alien may be ad-  
7 mitted as an H-2A worker (as defined in subsection  
8 (x)(2)) unless the employer has filed with the Secretary  
9 of Labor an application stating the following:

10 “(1) TEMPORARY OR SEASONAL LABOR OR  
11 SERVICES.—The agricultural employment for which  
12 the H-2A worker or workers is or are sought is tem-  
13 porary or seasonal, the number of workers sought,  
14 and the wage rate and conditions under which they  
15 will be employed.

16 “(2) BENEFITS, WAGE, AND WORKING CONDI-  
17 TIONS.—The employer will provide, at a minimum,  
18 the benefits, wages, and working conditions required  
19 by subsection (n) to all workers employed in the jobs  
20 for which the H-2A worker or workers is or are  
21 sought and to all other workers in the same occupa-  
22 tion at the place of employment.

23 “(3) NONDISPLACEMENT OF UNITED STATES  
24 WORKERS.—The employer did not displace and will  
25 not displace a United States worker employed by the  
26 employer during the period of employment and dur-

1       ing a period of 30 days preceding the period of em-  
2       ployment in the occupation at the place of employ-  
3       ment for which the employer seeks approval to em-  
4       ploy H-2A workers.

5           “(4) POSITIVE RECRUITMENT.—The employer  
6       has made positive recruitment efforts within a multi-  
7       state region of traditional or expected labor supply.  
8       The obligation to engage in positive recruitment  
9       under this paragraph shall terminate on the date the  
10      H-2A workers depart for the employer’s place of  
11      employment.

12          “(5) OFFERS TO UNITED STATES WORKERS.—  
13      The employer has offered or will offer the job for  
14      which the nonimmigrant is, or the nonimmigrants  
15      are, sought to any eligible United States worker who  
16      applies and is equally or better qualified for the job  
17      and who will be available at the time and place of  
18      need.

19          “(6) 50 PERCENT RULE.—The employer will  
20      provide employment to any qualified United States  
21      worker who applies to the employer until 50 percent  
22      of the period of the work contract under which the  
23      H-2A worker who is in the job was hired has  
24      elapsed.

1           “(7) PROVISION OF INSURANCE.—If the job for  
2           which the nonimmigrant is, or the nonimmigrants  
3           are, sought is not covered by State workers’ com-  
4           pensation law, the employer will provide, at no cost  
5           to the worker, insurance covering injury and disease  
6           arising out of, and in the course of, the worker’s em-  
7           ployment which will provide benefits at least equal to  
8           those provided under the State workers’ compensa-  
9           tion law for comparable employment.

10           “(8) REQUIREMENTS FOR PLACEMENT OF H-2A  
11           WORKERS WITH OTHER EMPLOYERS.—The employer  
12           will not place the nonimmigrant with another em-  
13           ployer unless—

14                   “(A) the nonimmigrant performs duties in  
15                   whole or in part at 1 or more work sites owned,  
16                   operated, or controlled by such other employer;

17                   “(B) there are indicia of an employment  
18                   relationship between the nonimmigrant and  
19                   such other employer; and

20                   “(C) the employer has inquired of the  
21                   other employer as to whether, and has no actual  
22                   knowledge or notice that, during the period of  
23                   employment and for a period of 30 days pre-  
24                   ceding the period of employment, the other em-  
25                   ployer has displaced or intends to displace a

1 United States worker employed by the other  
2 employer in the occupation at the place of em-  
3 ployment for which the employer seeks approval  
4 to employ H-2A workers.

5 “(9) STRIKE OR LOCKOUT.—There is not a  
6 strike or lockout in the course of a labor dispute  
7 which, under regulations promulgated by the Sec-  
8 retary of Labor, precludes the provision of the cer-  
9 tification described in section 101(a)(15)(H)(ii)(a).

10 “(10) PREVIOUS VIOLATIONS.—The employer  
11 has not, during the previous two-year period, em-  
12 ployed H-2A workers and substantially violated a  
13 material term or condition of approval with respect  
14 to the employment of domestic or nonimmigrant  
15 workers, as determined by the Secretary of Labor  
16 after notice and opportunity for a hearing.

17 “(b) STATEMENT OF LIABILITY.—The application  
18 form shall include a clear statement explaining the liability  
19 under this section of a employer who places an H-2A  
20 worker with another employer if the other employer dis-  
21 places a United States worker in violation of the condition  
22 described in subsection (a)(8).

23 “(c) PUBLICATION.—The employer shall make avail-  
24 able for public examination, within one working day after  
25 the date on which an application under this paragraph is

1 filed, at the employer's principal place of business or work-  
2 site, a copy of each such application (and such accom-  
3 panying documents as are necessary).

4       “(d) LIST.—The Secretary shall compile, on a cur-  
5 rent basis, a list (by employer) of the applications filed  
6 under subsection (a). Such list shall include the wage rate,  
7 number of aliens sought, period of intended employment,  
8 and date of need. The Secretary shall make such list avail-  
9 able for public examination in Washington, D.C.

10       “(e) SPECIAL RULES FOR CONSIDERATION OF AP-  
11 PPLICATIONS.—The following rules shall apply in the case  
12 of the filing and consideration of an application under sub-  
13 section (a):

14           “(1) DEADLINE FOR FILING APPLICATIONS.—  
15       The Secretary of Labor may not require that the ap-  
16 plication be filed more than 45 days before the first  
17 date the employer requires the labor or services of  
18 the H-2A worker or workers.

19           “(2) REVIEW.—The Secretary of Labor shall  
20 review such an application only for completeness and  
21 obvious inaccuracies.

22           “(3) ISSUANCE OF APPROVAL.—Unless the Sec-  
23 retary finds that the application is incomplete or ob-  
24 viously inaccurate, the Secretary shall provide the  
25 certification       described       in       section

1 101(a)(15)(H)(ii)(a) within 7 days of the date of the  
2 filing of the application.

3 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

4 “(1) PERMITTING FILING BY AGRICULTURAL  
5 ASSOCIATIONS.—An application to import an alien  
6 as a temporary agricultural worker may be filed by  
7 an association of agricultural producers which use  
8 agricultural services.

9 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
10 EMPLOYERS.—If an association is a joint or sole em-  
11 ployer of temporary agricultural workers, such work-  
12 ers may be transferred among its producer members  
13 to perform agricultural services of a temporary or  
14 seasonal nature for which the application was ap-  
15 proved.

16 “(3) TREATMENT OF VIOLATIONS.—

17 “(A) MEMBER’S VIOLATION DOES NOT  
18 NECESSARILY DISQUALIFY ASSOCIATION OR  
19 OTHER MEMBERS.—If an individual producer  
20 member of a joint employer association is deter-  
21 mined to have committed an act that is in viola-  
22 tion of the conditions for approval with respect  
23 to the member’s application, the denial shall  
24 apply only to that member of the association  
25 unless the Secretary determines that the asso-

1            ciation or other member participated in, had  
2            knowledge of, or reason to know of, the viola-  
3            tion.

4            “(B) ASSOCIATION’S VIOLATION DOES NOT  
5            NECESSARILY DISQUALIFY MEMBERS.—

6            “(i) If an association representing ag-  
7            ricultural producers as a joint employer is  
8            determined to have committed an act that  
9            is in violation of the conditions for ap-  
10          proval with respect to the association’s ap-  
11          plication, the denial shall apply only to the  
12          association and does not apply to any indi-  
13          vidual producer member of the association  
14          unless the Secretary determines that the  
15          member participated in, had knowledge of,  
16          or reason to know of, the violation.

17          “(ii) If an association of agricultural  
18          producers approved as a sole employer is  
19          determined to have committed an act that  
20          is in violation of the conditions for ap-  
21          proval with respect to the association’s ap-  
22          plication, no individual producer member  
23          of such association may be the beneficiary  
24          of the services of temporary alien agricul-  
25          tural workers admitted under this section



1 in the commodity and occupation in which  
2 such aliens were employed by the associa-  
3 tion which was denied approval during the  
4 period such denial is in force, unless such  
5 producer member employs such aliens in  
6 the commodity and occupation in question  
7 directly or through an association which is  
8 a joint employer of such workers with the  
9 producer member.

10 “(g) EXPEDITED ADMINISTRATIVE APPEALS OF  
11 CERTAIN DETERMINATIONS.—Regulations shall provide  
12 for an expedited procedure for the review of a denial of  
13 approval under this section, or at the applicant’s request,  
14 for a de novo administrative hearing respecting the denial.

15 “(h) MISCELLANEOUS PROVISIONS.—

16 “(1) WITHHOLDING OF DOMESTIC WORKERS.—  
17 No person or entity shall willfully and knowingly  
18 withhold domestic workers prior to the arrival of H-  
19 2A workers in order to force the hiring of domestic  
20 workers under subsection (a)(6).

21 “(2) ENDORSEMENT OF DOCUMENTS.—The  
22 Secretary of Homeland Security shall provide for the  
23 endorsement of entry and exit documents of non-  
24 immigrants described in section 101(a)(15)(H)(ii)(a)

1 as may be necessary to carry out this section and to  
2 provide notice for purposes of section 274A.

3 “(3) PREEMPTION OF STATE LAWS.—The pro-  
4 visions of subsections (a) and (c) of section 214 and  
5 the provisions of this section preempt any State or  
6 local law regulating admissibility of nonimmigrant  
7 workers.

8 “(4) FEES.—The Secretary of Labor may re-  
9 quire by regulation, as a condition of approving the  
10 application, the payment of a fee to recover the rea-  
11 sonable costs of processing applications.

12 “(i) FAILURES TO MEET CONDITIONS.—If the Sec-  
13 retary of Labor finds, after notice and opportunity for a  
14 hearing, a failure to meet a condition of subsection (a),  
15 or a material misrepresentation of fact in an application  
16 under subsection (a)—

17 “(1) the Secretary of Labor shall notify the  
18 Secretary of such finding and may, in addition, im-  
19 pose such other administrative remedies (including  
20 civil money penalties in an amount not to exceed  
21 \$1,000 per violation) as the Secretary of Labor de-  
22 termines to be appropriate; and

23 “(2) the Secretary may disqualify the employer  
24 from the employment of H-2A workers for a period  
25 of 1 year.

1       “(j) WILLFUL FAILURES AND WILLFUL MISREPRE-  
2       SENTATIONS.—If the Secretary of Labor finds, after no-  
3       tice and opportunity for hearing, a willful failure to meet  
4       a condition of subsection (a), or a willful misrepresenta-  
5       tion of a material fact in an application under subsection  
6       (a), or a violation of subsection (h)(1)—

7               “(1) the Secretary of Labor shall notify the  
8       Secretary of such finding and may, in addition, im-  
9       pose such other administrative remedies (including  
10      civil money penalties in an amount not to exceed  
11      \$5,000 per violation) as the Secretary of Labor de-  
12      termines to be appropriate;

13              “(2) the Secretary of Labor may seek appro-  
14      priate legal or equitable relief to effectuate the pur-  
15      poses of subsection (h)(1); and

16              “(3) the Secretary may disqualify the employer  
17      from the employment of H-2A workers for a period  
18      of 2 years.

19       “(k) DISPLACEMENT OF UNITED STATES WORK-  
20      ERS.—If the Secretary of Labor finds, after notice and  
21      opportunity for hearing, a willful failure to meet a condi-  
22      tion of subsection (a) or a willful misrepresentation of a  
23      material fact in an application under subsection (a), in  
24      the course of which failure or misrepresentation the em-  
25      ployer displaced a United States worker employed by the

1 employer during the period of employment on the employ-  
2 er's application under subsection (a) or during the period  
3 of 30 days preceding such period of employment—

4 “(1) the Secretary of Labor shall notify the  
5 Secretary of such finding and may, in addition, im-  
6 pose such other administrative remedies (including  
7 civil money penalties in an amount not to exceed  
8 \$15,000 per violation) as the Secretary of Labor de-  
9 termines to be appropriate; and

10 “(2) the Secretary may disqualify the employer  
11 from the employment of H-2A workers for a period  
12 of 3 years.

13 “(l) LIMITATIONS ON CIVIL MONEY PENALTIES.—  
14 The Secretary of Labor shall not impose total civil money  
15 penalties with respect to an application under subsection  
16 (a) in excess of \$90,000.

17 “(m) FAILURES TO PAY WAGES OR REQUIRED BEN-  
18 EFITS.—If the Secretary of Labor finds, after notice and  
19 opportunity for a hearing, that the employer has failed to  
20 pay the wages, or provide the housing allowance, transpor-  
21 tation, subsistence reimbursement, or guarantee of em-  
22 ployment, required under subsection (a)(2) the Secretary  
23 of Labor shall assess payment of back wages, or other re-  
24 quired benefits, due any United States worker or H-2A  
25 worker employed by the employer in the specific employ-

1 ment in question. The back wages or other required bene-  
2 fits under section subsection (a)(2) shall be equal to the  
3 difference between the amount that should have been paid  
4 and the amount that actually was paid to such worker.

5 “(n) MINIMUM BENEFITS, WAGES, AND WORKING  
6 CONDITIONS.—

7 “(1) PREFERENTIAL TREATMENT OF ALIENS  
8 PROHIBITED.—Employers seeking to hire United  
9 States workers shall offer the United States workers  
10 no less than the same benefits, wages, and working  
11 conditions that the employer is offering, intends to  
12 offer, or will provide to H-2A workers. Conversely,  
13 no job offer may impose on United States workers  
14 any restrictions or obligations which will not be im-  
15 posed on the employer’s H-2A workers.

16 “(2) REQUIRED WAGES.—

17 “(A) An employer applying for workers  
18 under subsection (a) shall offer to pay, and  
19 shall pay, all workers in the occupation for  
20 which the employer has applied for workers, not  
21 less than the prevailing wage.

22 “(B) In complying with subparagraph (A),  
23 an employer may request and obtain a pre-  
24 vailing wage determination from the State em-  
25 ployment security agency.

1           “(C) In lieu of the procedure described in  
2           subparagraph (B), an employer may rely on  
3           other wage information, including a survey of  
4           the prevailing wages of workers in the occupa-  
5           tion in the area of intended employment that  
6           has been conducted or funded by the employer  
7           or a group of employers, that meets criteria  
8           specified by the Secretary of Labor in regula-  
9           tions.

10           “(D) An employer who obtains such pre-  
11           vailing wage determination, or who relies on a  
12           qualifying survey of prevailing wages, and who  
13           pays the wage determined to be prevailing, shall  
14           be considered to have complied with the re-  
15           quirement of subparagraph (A).

16           “(E) No worker shall be paid less than the  
17           greater of the prevailing wage or the applicable  
18           State minimum wage.

19           “(3) REQUIREMENT TO PROVIDE HOUSING OR A  
20           HOUSING ALLOWANCE.—

21           “(A) IN GENERAL.—An employer applying  
22           for workers under subsection (a) shall offer to  
23           provide housing at no cost to all workers in job  
24           opportunities for which the employer has ap-  
25           plied under that section and to all other work-

1           ers in the same occupation at the place of em-  
2           ployment, whose place of residence is beyond  
3           normal commuting distance.

4           “(B) TYPE OF HOUSING.—In complying  
5           with subparagraph (A), an employer may, at  
6           the employer’s election, provide housing that  
7           meets applicable Federal standards for tem-  
8           porary labor camps or secure housing that  
9           meets applicable local standards for rental or  
10          public accommodation housing or other sub-  
11          stantially similar class of habitation, or in the  
12          absence of applicable local standards, State  
13          standards for rental or public accommodation  
14          housing or other substantially similar class of  
15          habitation. In the absence of applicable local or  
16          State standards, Federal temporary labor camp  
17          standards shall apply.

18          “(C) WORKERS ENGAGED IN THE RANGE  
19          PRODUCTION OF LIVESTOCK.—The Secretary of  
20          Labor shall issue regulations that address the  
21          specific requirements for the provision of hous-  
22          ing to workers engaged in the range production  
23          of livestock.

24          “(D) LIMITATION.—Nothing in this para-  
25          graph shall be construed to require an employer

1 to provide or secure housing for persons who  
2 were not entitled to such housing under the  
3 temporary labor certification regulations in ef-  
4 fect on June 1, 1986.

5 “(E) HOUSING ALLOWANCE AS ALTER-  
6 NATIVE.—

7 “(i) IN GENERAL.—In lieu of offering  
8 housing pursuant to subparagraph (A), the  
9 employer may provide a reasonable housing  
10 allowance, but only if the requirement of  
11 clause (ii) is satisfied. Upon the request of  
12 a worker seeking assistance in locating  
13 housing, the employer shall [make a good  
14 faith effort to] assist the worker in identi-  
15 fying and locating housing in the area of  
16 intended employment. An employer who of-  
17 fers a housing allowance to a worker, or  
18 assists a worker in locating housing which  
19 the worker occupies, pursuant to this  
20 clause shall not be deemed a housing pro-  
21 vider under section 203 of the Migrant and  
22 Seasonal Agricultural Worker Protection  
23 Act (29 U.S.C. 1823) solely by virtue of  
24 providing such housing allowance. How-  
25 ever, no housing allowance may be used for



1 housing which is owned or controlled by  
2 the employer.

3 “(ii) CERTIFICATION.—The require-  
4 ment of this clause is satisfied if the Gov-  
5 ernor of the State certifies to the Secretary  
6 of Labor that there is adequate housing  
7 available in the area of intended employ-  
8 ment for migrant farm workers, and H-2A  
9 workers, who are seeking temporary hous-  
10 ing while employed at farm work. Such  
11 certification shall expire after 3 years un-  
12 less renewed by the Governor of the State.

13 “(iii) AMOUNT OF ALLOWANCE.—

14 “(I) NONMETROPOLITAN COUN-  
15 TIES.—If the place of employment of  
16 the workers provided an allowance  
17 under this subparagraph is a non-  
18 metropolitan county, the amount of  
19 the housing allowance under this sub-  
20 paragraph shall be equal to the state-  
21 wide average fair market rental for  
22 existing housing for nonmetropolitan  
23 counties for the State, as established  
24 by the Secretary of Housing and  
25 Urban Development pursuant to sec-

1                   tion 8(c) of the United States Hous-  
2                   ing Act of 1937 (42 U.S.C. 1437f(c)),  
3                   based on a 2-bedroom dwelling unit  
4                   and an assumption of 2 persons per  
5                   bedroom.

6                   “(II) METROPOLITAN COUN-  
7                   TIES.—If the place of employment of  
8                   the workers provided an allowance  
9                   under this paragraph is in a metro-  
10                  politan county, the amount of the  
11                  housing allowance under this subpara-  
12                  graph shall be equal to the statewide  
13                  average fair market rental for existing  
14                  housing for metropolitan counties for  
15                  the State, as established by the Sec-  
16                  retary of Housing and Urban Devel-  
17                  opment pursuant to section 8(c) of  
18                  the United States Housing Act of  
19                  1937 (42 U.S.C. 1437f(c)), based on  
20                  a 2-bedroom dwelling unit and an as-  
21                  sumption of 2 persons per bedroom.

22                  “(4) REIMBURSEMENT OF TRANSPORTATION.—

23                  “(A) TO PLACE OF EMPLOYMENT.—A  
24                  worker shall be reimbursed by the employer for  
25                  the cost of the worker’s transportation and sub-

1           sistence from the place from which the worker  
2           came to work for the employer (or place of last  
3           employment, if the worker traveled from such  
4           place) to the place of employment.

5           “(B) FROM PLACE OF EMPLOYMENT.—A  
6           worker who completes the period of employment  
7           for the job opportunity involved shall be reim-  
8           bursed by the employer for the cost of the  
9           worker’s transportation and subsistence from  
10          the place of employment to the place from  
11          which the worker, disregarding intervening em-  
12          ployment, came to work for the employer, or to  
13          the place of next employment, if the worker has  
14          contracted with a subsequent employer who has  
15          not agreed to provide or pay for the worker’s  
16          transportation and subsistence to such subse-  
17          quent employer’s place of employment.

18          “(C) LIMITATION.—

19                 “(i) AMOUNT OF REIMBURSEMENT.—  
20                 Except as provided in clause (ii), the  
21                 amount of reimbursement provided under  
22                 subparagraph (A) or (B) to a worker or  
23                 alien shall not exceed the lesser of—

1                   “(I) the actual cost to the worker  
2                   or alien of the transportation and sub-  
3                   sistence involved; or

4                   “(II) the most economical and  
5                   reasonable common carrier transpor-  
6                   tation charges and subsistence costs  
7                   for the distance involved.

8                   “(ii) DISTANCE TRAVELED.—No reim-  
9                   bursement under subparagraph (A) or (B)  
10                  shall be required if the distance traveled is  
11                  100 miles or less, or the worker is not re-  
12                  siding in employer-provided housing or  
13                  housing secured through an allowance as  
14                  provided in paragraph (1)(G).

15                  “(D) EARLY TERMINATION.—If the worker  
16                  is laid off or employment is terminated for con-  
17                  tract impossibility (as described in paragraph  
18                  (5)(D)) before the anticipated ending date of  
19                  employment, the employer shall provide the  
20                  transportation and subsistence required by sub-  
21                  paragraph (B) and, notwithstanding whether  
22                  the worker has completed 50 percent of the pe-  
23                  riod of employment, shall provide the transpor-  
24                  tation reimbursement required by subparagraph  
25                  (A).

1           “(E) TRANSPORTATION BETWEEN LIVING  
2           QUARTERS AND WORK SITE.—The employer  
3           shall provide transportation between the work-  
4           er’s living quarters (i.e., housing provided by  
5           the employer pursuant to paragraph (1), includ-  
6           ing housing provided through a housing allow-  
7           ance) and the employer’s work site without cost  
8           to the worker, and such transportation will be  
9           in accordance with applicable laws and regula-  
10          tions.

11          “(5) GUARANTEE OF EMPLOYMENT.—

12               “(A) OFFER TO WORKER.—The employer  
13           shall guarantee to offer the worker employment  
14           for the hourly equivalent of at least three-  
15           fourths of the work days of the total period of  
16           employment, beginning with the first work day  
17           after the arrival of the worker at the place of  
18           employment and ending on the expiration date  
19           specified in the job offer. For purposes of this  
20           subparagraph, the hourly equivalent means the  
21           number of hours in the work days as stated in  
22           the job offer and shall exclude the worker’s  
23           Sabbath and Federal holidays. If the employer  
24           affords the United States or H-2A worker less  
25           employment than that required under this para-

1 graph, the employer shall pay such worker the  
2 amount which the worker would have earned  
3 had the worker, in fact, worked for the guaran-  
4 teed number of hours.

5 “(B) FAILURE TO WORK.—Any hours  
6 which the worker fails to work, up to a max-  
7 imum of the number of hours specified in the  
8 job offer for a work day, when the worker has  
9 been offered an opportunity to do so, and all  
10 hours of work actually performed (including vol-  
11 untary work in excess of the number of hours  
12 specified in the job offer in a work day, on the  
13 worker’s Sabbath, or on Federal holidays) may  
14 be counted by the employer in calculating  
15 whether the period of guaranteed employment  
16 has been met.

17 “(C) ABANDONMENT OF EMPLOYMENT,  
18 TERMINATION FOR CAUSE.—If the worker vol-  
19 untarily abandons employment before the end  
20 of the contract period, or is terminated for  
21 cause, the worker is not entitled to the ‘three-  
22 fourths guarantee described in subparagraph  
23 (A).

24 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
25 fore the expiration of the period of employment

1 specified in the job offer, the services of the  
2 worker are no longer required for reasons be-  
3 yond the control of the employer due to any  
4 form of natural disaster, including but not lim-  
5 ited to a flood, hurricane, freeze, earthquake,  
6 fire, drought, plant or animal disease or pest in-  
7 festation, or regulatory drought, before the  
8 guarantee in subparagraph (A) is fulfilled, the  
9 employer may terminate the worker's employ-  
10 ment. In the event of such termination, the em-  
11 ployer shall fulfill the employment guarantee in  
12 subparagraph (A) for the work days that have  
13 elapsed from the first work day after the arrival  
14 of the worker to the termination of employ-  
15 ment. In such cases, the employer will make ef-  
16 forts to transfer the United States worker to  
17 other comparable employment acceptable to the  
18 worker.

19 “(o) PETITIONING FOR ADMISSION.—An employer,  
20 or an association acting as an agent or joint employer for  
21 its members, that seeks the admission into the United  
22 States of an H-2A worker must file a petition with the  
23 Secretary. The petition shall be accompanied by the cer-  
24 tification described in section 101(a)(15)(H)(ii)(a).

1       “(p) EXPEDITED ADJUDICATION BY THE SEC-  
2 RETARY.—The Secretary shall establish a procedure for  
3 expedited adjudication of petitions filed under subsection  
4 (o) and within 7 working days shall, by fax, cable, or other  
5 means assuring expedited delivery, transmit a copy of no-  
6 tice of action on the petition to the petitioner and, in the  
7 case of approved petitions, to the appropriate immigration  
8 officer at the port of entry or United States consulate (as  
9 the case may be) where the petitioner has indicated that  
10 the alien beneficiary (or beneficiaries) will apply for a visa  
11 or admission to the United States.

12       “(q) DISQUALIFICATION.—

13           “(1) Subject to paragraph (2), an alien shall be  
14 considered inadmissible to the United States and in-  
15 eligible for nonimmigrant status under section  
16 101(a)(15)(H)(ii)(a) if the alien has, at any time  
17 during the past 5 years, violated a term or condition  
18 of admission into the United States as a non-  
19 immigrant, including overstaying the period of au-  
20 thorized admission.

21       “(2) WAIVERS.—

22           “(A) IN GENERAL.—An alien outside the  
23 United States, and seeking admission under  
24 section 101(a)(15)(H)(ii)(a) shall not be  
25 deemed inadmissible under such section by rea-



1 son of paragraph (1) or section 212(a)(9)(B). A  
2 waiver under this subparagraph may be granted  
3 only once to an individual alien.

4 “(B) LIMITATION.—In any case in which  
5 an alien is admitted to the United States upon  
6 having a ground of inadmissibility waived under  
7 subparagraph (A), such waiver shall be consid-  
8 ered to remain in effect unless the alien again  
9 violates a material provision of this section or  
10 otherwise violates a term or condition of admis-  
11 sion into the United States as a nonimmigrant,  
12 in which case such waiver shall terminate.

13 “(r) PERIOD OF ADMISSION.—

14 “(1) IN GENERAL.—The alien shall be admitted  
15 for the period of employment in the application  
16 under subsection (a), not to exceed 10 months, sup-  
17 plemented by a period of up to 1 week before the be-  
18 ginning of the period of employment (to be granted  
19 for the purpose of travel to the work site) and a pe-  
20 riod of 14 days following the period of employment  
21 (to be granted for the purpose of departure or exten-  
22 sion based on a subsequent offer of employment), ex-  
23 cept that—

24 “(A) the alien is not authorized to be em-  
25 ployed during such 14-day period except in the

1 employment for which the alien was previously  
2 authorized; and

3 “(B) the total period of employment, in-  
4 cluding such 14-day period, may not exceed 10  
5 months.

6 “(2) CONSTRUCTION.—Nothing in this sub-  
7 section shall limit the authority of the Secretary to  
8 extend the stay of the alien under any other provi-  
9 sion of this Act.

10 “(s) ABANDONMENT OF EMPLOYMENT.—

11 “(1) IN GENERAL.—An alien admitted or pro-  
12 vided status under section 101(a)(15)(H)(ii)(a) who  
13 abandons the employment which was the basis for  
14 such admission or status shall be considered to have  
15 failed to maintain nonimmigrant status as an H-2A  
16 worker and shall depart the United States or be sub-  
17 ject to removal under section 237(a)(1)(C)(i).

18 “(2) REPORT BY EMPLOYER.—The employer  
19 (or association acting as agent for the employer)  
20 shall notify the Secretary within 7 days of an H-2A  
21 worker’s having prematurely abandoned employ-  
22 ment.

23 “(3) REMOVAL BY THE SECRETARY.—The Sec-  
24 retary shall promptly remove from the United States

1 any H-2A worker who violates any term or condi-  
2 tion of the worker's nonimmigrant status.

3 “(6) VOLUNTARY TERMINATION.—Notwith-  
4 standing paragraph (1), an alien may voluntarily  
5 terminate his or her employment if the alien prompt-  
6 ly departs the United States upon termination of  
7 such employment.

8 “(t) REPLACEMENT OF ALIEN.—

9 “(1) IN GENERAL.—Upon presentation of the  
10 notice to the Secretary required by subsection (q)(2),  
11 the Secretary of State shall promptly issue a visa to,  
12 and the Secretary shall admit into the United  
13 States, an eligible alien designated by the employer  
14 to replace an H-2A worker—

15 “(A) who abandons or prematurely termi-  
16 nates employment; or

17 “(B) whose employment is terminated  
18 after a United States worker is employed pur-  
19 suant to subsection (a)(6), if the United States  
20 worker voluntarily departs before the end of the  
21 period of intended employment or if the employ-  
22 ment termination is for a lawful job-related rea-  
23 son.

24 “(2) CONSTRUCTION.—Nothing in this sub-  
25 section is intended to limit any preference required

1 to be accorded United States workers under any  
2 other provision of this Act.

3 “(u) IDENTIFICATION DOCUMENT.—

4 “(1) IN GENERAL.—Each alien authorized to be  
5 admitted under section 101(a)(15)(H)(ii)(a) shall be  
6 provided an identification and employment eligibility  
7 document to verify eligibility for employment in the  
8 United States and verify such person’s proper iden-  
9 tity.

10 “(2) REQUIREMENTS.—No identification and  
11 employment eligibility document may be issued  
12 which does not meet the following requirements:

13 “(A) The document shall be capable of re-  
14 liably determining whether-

15 “(i) the individual with the identifica-  
16 tion and employment eligibility document  
17 whose eligibility is being verified is in fact  
18 eligible for employment;

19 “(ii) the individual whose eligibility is  
20 being verified is claiming the identity of  
21 another person; and

22 “(iii) the individual whose eligibility is  
23 being verified is authorized to be admitted  
24 into, and employed in, the United States  
25 as an H-2A worker.

1           “(B) The document shall be in a form that  
2           is resistant to counterfeiting and to tampering.

3           “(C) The document shall—

4                   “(i) be compatible with other data-  
5                   bases of the Secretary for the purpose of  
6                   excluding aliens from benefits for which  
7                   they are not eligible and determining  
8                   whether the alien is unlawfully present in  
9                   the United States; and

10                   “(ii) be compatible with law enforce-  
11                   ment databases to determine if the alien  
12                   has been convicted of criminal offenses.

13           “(v) EXTENSION OF STAY OF H-2A ALIENS IN THE  
14           UNITED STATES.—

15                   “(1) EXTENSION OF STAY.—If an employer  
16                   seeks approval to employ an H-2A alien who is law-  
17                   fully present in the United States, the petition filed  
18                   by the employer or an association pursuant to sub-  
19                   section (o) shall request an extension of the alien’s  
20                   stay and a change in the alien’s employment.

21                   “(2) LIMITATION ON FILING PETITION FOR EX-  
22                   TENSION OF STAY.—A petition may not be filed for  
23                   an extension of an alien’s stay—

24                   “(A) for a period of more than 10 months;

25                   or

1           “(B) to a date that is more than 2 years  
2           after the date of the alien’s last admission to  
3           the United States under this section.

4           “(3) WORK AUTHORIZATION UPON FILING PE-  
5           TITION FOR EXTENSION OF STAY.—In the case of an  
6           alien who is lawfully present in the United States,  
7           the alien is authorized to commence the employment  
8           described in a petition under paragraph (1) on the  
9           date on which the petition is filed. For purposes of  
10          the preceding sentence, the term ‘file’ means sending  
11          the petition by certified mail via the United States  
12          Postal Service, return receipt requested, or delivered  
13          by guaranteed commercial delivery which will provide  
14          the employer with a documented acknowledgment of  
15          the date of receipt of the petition. The employer  
16          shall provide a copy of the employer’s petition to the  
17          alien, who shall keep the petition with the alien’s  
18          identification and employment eligibility document  
19          as evidence that the petition has been filed and that  
20          the alien is authorized to work in the United States.  
21          Upon approval of a petition for an extension of stay  
22          or change in the alien’s authorized employment, the  
23          Secretary shall provide a new or updated employ-  
24          ment eligibility document to the alien indicating the

1 new validity date, after which the alien is not re-  
2 quired to retain a copy of the petition.

3 “(4) LIMITATION ON AN INDIVIDUAL’S STAY IN  
4 STATUS.—

5 “(A) MAXIMUM PERIOD.—The maximum  
6 continuous period of authorized status as an  
7 H-2A worker (including any extensions) is 2  
8 years.

9 “(B) REQUIREMENT TO REMAIN OUTSIDE  
10 THE UNITED STATES.—

11 “(i) IN GENERAL.—Subject to clause  
12 (ii), in the case of an alien outside the  
13 United States whose period of authorized  
14 status as an H-2A worker (including any  
15 extensions) has expired, the alien may not  
16 again apply for admission to the United  
17 States as an H-2A worker unless the alien  
18 has remained outside the United States for  
19 a continuous period equal to at least  $\frac{1}{5}$   
20 the duration of the alien’s previous period  
21 of authorized status as an H-2A worker  
22 (including any extensions).

23 “(ii) EXCEPTION.—Clause (i) shall  
24 not apply in the case of an alien if the  
25 alien’s period of authorized status as an

1 H-2A worker (including any extensions)  
2 was for a period of not more than 10  
3 months and such alien has been outside  
4 the United States for at least 2 months  
5 during the 12 months preceding the date  
6 the alien again is applying for admission to  
7 the United States as an H-2A worker.

8 “(w) SPECIAL RULES FOR ALIENS EMPLOYED AS  
9 SHEEPHERDERS.—Notwithstanding any other provision  
10 of this section, aliens admitted under section  
11 101(a)(15)(H)(ii)(a) for employment as shepherders—

12 “(1) may be admitted for a period of 12  
13 months; and

14 “(2) shall not be subject to the requirements of  
15 subsection (v)(4)(B).

16 “(x) DEFINITIONS.—For purposes of this section:

17 “(1) AREA OF EMPLOYMENT.—The term ‘area  
18 of employment’ means the area within normal com-  
19 muting distance of the worksite or physical location  
20 where the work of the H-2A worker is or will be  
21 performed. If such worksite or location is within a  
22 Metropolitan Statistical Area, any place within such  
23 area is deemed to be within the area of employment.

24 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
25 individual’ means, with respect to employment, an



1 individual who is not an unauthorized alien (as de-  
2 fined in section 274A(h)(3)) with respect to that em-  
3 ployment.

4 “(3) DISPLACE.—In the case of an application  
5 with respect to one or more H-2A workers by an  
6 employer, the employer is considered to ‘displace’ a  
7 United States worker from a job if the employer lays  
8 off the worker from a job that is essentially the  
9 equivalent of the job for which the H-2A worker or  
10 workers is or are sought. A job shall not be consid-  
11 ered to be essentially equivalent of another job un-  
12 less it involves essentially the same responsibilities,  
13 was held by a United States worker with substan-  
14 tially equivalent qualifications and experience, and is  
15 located in the same area of employment as the other  
16 job.

17 “(4) H-2A WORKER.—The term ‘H-2A worker’  
18 means a nonimmigrant described in section  
19 101(a)(15)(H)(ii)(a).

20 “(5) LAYS OFF.—

21 “(A) IN GENERAL.—The term ‘lays off’,  
22 with respect to a worker—

23 “(i) means to cause the worker’s loss  
24 of employment, other than through a dis-  
25 charge for inadequate performance, viola-

1           tion of workplace rules, cause, voluntary  
2           departure, voluntary retirement, or the ex-  
3           piration of a grant or contract (other than  
4           a temporary employment contract entered  
5           into in order to evade a condition described  
6           in paragraph (3) or (8) of subsection (a);  
7           but

8                   “(ii) does not include any situation in  
9           which the worker is offered, as an alter-  
10          native to such loss of employment, a simi-  
11          lar employment opportunity with the same  
12          employer (or, in the case of a placement of  
13          a worker with another employer under sub-  
14          section (a)(8), with either employer de-  
15          scribed in such subsection) at equivalent or  
16          higher compensation and benefits than the  
17          position from which the employee was dis-  
18          charged, regardless of whether or not the  
19          employee accepts the offer.

20                   “(B) CONSTRUCTION.—Nothing in this  
21          paragraph is intended to limit an employee’s  
22          rights under a collective bargaining agreement  
23          or other employment contract.

24                   “(6) PREVAILING WAGE.—The term ‘prevailing  
25          wage’ means, with respect to an agricultural occupa-

1       tion in an area of intended employment, the rate of  
2       wages that includes the 51st percentile of employees  
3       with similar experience and qualifications in the ag-  
4       ricultural occupation in the area of intended employ-  
5       ment, expressed in terms of the prevailing method of  
6       pay for the occupation in the area of intended em-  
7       ployment.

8           “(7) UNITED STATES WORKER.—The term  
9       ‘United States worker’ means an employee who—

10           “(A) is a citizen or national of the United  
11       States; or

12           “(B) is an alien who is lawfully admitted  
13       for permanent residence, is admitted as a ref-  
14       ugee under section 207, is granted asylum  
15       under section 208, or is an immigrant otherwise  
16       authorized, by this Act or by the Secretary of  
17       Homeland Security, to be employed.”.

18       (b)       CONFORMING       AMENDMENT.—Section  
19       101(a)(15)(H)(ii)(a) of the Immigration and Nationality  
20       Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-  
21       ing “seasonal nature, or (b)” and inserting “seasonal na-  
22       ture, and with respect to whom the Secretary of Labor  
23       determines and certifies to the Secretary of Homeland Se-  
24       curity that the intending employer has filed with the Sec-  
25       retary an application under section 218(a), or (b)”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the date that is 180 days  
3 after the date of the enactment of this Act.

**Section 3. Emergency grants to assist employers with H-2A transportation costs.**

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.) is amended by adding at the end the following:

“Sec. 379E. Emergency grants to assist employers with H-2A transportation costs.

“(a) In general. The Secretary of Agriculture may make grants, not to exceed \$1,000,000 annually, to employers of H-2A workers for the purpose of reimbursing the employers for the amounts paid to H-2A workers under section 218(n)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1188) if, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including but not limited to a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought.

“(b) Funding. The grants described in subsection (a) shall be made out of the funds, facilities and authorities of the Commodity Credit Corporation to the extent that such funds are provided in advance through an appropriations act.”.

**Sec. 4. Establishment of H-2A Ombudsman.**

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.), as amended by section 3 of this Act, is amended by adding at the end the following:

“Sec. 379F. Establishment of H-2A Ombudsman.

“Ombudsman. The Secretary shall establish an H-2A Worker Program Ombudsman within the office of Agricultural Labor Affairs, Office of the Chief Economist, U.S. Department of Agriculture. The H-2A Ombudsman shall help resolve disputes and other conflicts between contracted H-2A workers and their employers, other than alleged violations of conditions required under section 218(a) of the Immigration and Nationality Act (8 U.S.C. 1188(a)).”.

